

IC 22-4-11.5

Chapter 11.5. Assignment of Employer Contribution Rates and Transfers of Employer Experience Accounts

IC 22-4-11.5-1

Applicability

Sec. 1. Notwithstanding any other provision of this article, this chapter applies to the assignment of contribution rates and transfers of employer experience accounts after December 31, 2005.

As added by P.L.98-2005, SEC.9.

IC 22-4-11.5-2

"Administrative law judge"

Sec. 2. As used in this chapter, "administrative law judge" means a person appointed by the commissioner under IC 22-4-17-4.

As added by P.L.98-2005, SEC.9.

IC 22-4-11.5-3

"Person"

Sec. 3. As used in this chapter, "person" has the meaning set forth in section 7701(a)(1) of the Internal Revenue Code.

As added by P.L.98-2005, SEC.9.

IC 22-4-11.5-4

"Trade or business"

Sec. 4. As used in this chapter, "trade or business" includes an employer's workforce.

As added by P.L.98-2005, SEC.9.

IC 22-4-11.5-5

"Violates or attempts to violate"

Sec. 5. As used in this chapter, "violates or attempts to violate" includes:

- (1) the intent to evade;
- (2) misrepresentation; or
- (3) willful nondisclosure.

As added by P.L.98-2005, SEC.9.

IC 22-4-11.5-6

"Knowingly"; "recklessly"

Sec. 6. As used in this chapter:

- (1) "knowingly" has the meaning set forth in IC 35-41-2-2(b); and
- (2) "recklessly" has the meaning set forth in IC 35-41-2-2(c).

As added by P.L.98-2005, SEC.9.

IC 22-4-11.5-7

Transferring all or part of trade or business; successor employers with substantially common ownership, management, or control

Sec. 7. (a) If:

(1) an employer transfers all or a portion of the employer's trade or business to another employer; and
(2) at the time of the transfer, the two (2) employers have substantially common ownership, management, or control;
the successor employer shall assume the experience rating of the predecessor employer for the resources and liabilities of the predecessor employer's experience account that are attributable to the transfer.

(b) The contribution rates of both employers shall be recalculated and made effective on the date that the transfer described in subsection (a) is effective.

(c) The experience account balance and the payroll of the predecessor employer on the date of the transfer, and the benefits chargeable to the predecessor employer's original experience account after the date of the transfer, must be divided between the predecessor employer and the successor employer in accordance with rules adopted by the department under IC 4-22-2.

(d) Any written determination made by the department is conclusive and binding on both the predecessor employer and the successor employer unless one (1) or both employers file with the department a written protest setting forth the grounds and reasons for the protest. A protest under this section must be filed not later than ten (10) days after the date the department mails the initial determination to the employing units. The protest shall be heard and determined under this section and IC 22-4-32-1 through IC 22-4-32-15. Both the predecessor employer and successor employer shall be parties to the hearing before the administrative law judge and are entitled to receive copies of all pleadings and the decision.

As added by P.L.98-2005, SEC.9.

IC 22-4-11.5-8

Transfers solely to obtain lower employer contribution rate

Sec. 8. (a) If the department determines that an employing unit or other person that is not an employer under IC 22-4-7 at the time of the acquisition has acquired an employer's trade or business solely for the purpose of obtaining a lower employer contribution rate, the employing unit or other person:

(1) may not assume the experience rating of the predecessor employer for the resources and liabilities of the predecessor employer's experience account that are attributable to the acquisition; and

(2) shall pay the applicable contribution rate as determined under this chapter.

(b) In determining whether an employing unit or other person acquired a trade or business solely for the purpose of obtaining a lower employer contribution rate under subsection (a), the commissioner shall consider the following:

(1) The cost of acquiring the trade or business.

(2) Whether the employing unit or other person continued the

business enterprise of the acquired trade or business.

(3) The length of time the employing unit or other person continued the business enterprise of the acquired trade or business.

(4) Whether a substantial number of new employees were hired to perform duties unrelated to the business enterprise that the trade or business conducted before the trade or business was acquired.

(c) If the commissioner makes an initial determination that a violation of this chapter has occurred, the commissioner shall promptly refer the matter to an administrative law judge for a hearing and decision under this article.

As added by P.L.98-2005, SEC.9.

IC 22-4-11.5-9

Violation of chapter; Class C misdemeanor

Sec. 9. A person who knowingly or recklessly:

(1) violates or attempts to violate:

(A) section 7 or 8 of this chapter; or

(B) any other provision of this article related to determining the assumption or assignment of an employer's contribution rate; or

(2) advises another person in a way that results in a violation of:

(A) section 7 or 8 of this chapter; or

(B) any other provision of this article related to determining the assumption or assignment of an employer's contribution rate;

commits a Class C misdemeanor.

As added by P.L.98-2005, SEC.9.

IC 22-4-11.5-10

Violation of chapter; civil penalties

Sec. 10. (a) In addition to any other penalty imposed, a person is subject to a civil penalty under this chapter.

(b) This subsection applies to a person who is an employer (as defined in IC 22-4-7). If an administrative law judge determines that a person is subject to a civil penalty under subsection (a), the administrative law judge shall assign an employer contribution rate equal to one (1) of the following as a civil penalty:

(1) The highest employer contribution rate assignable under this article for:

(A) the year in which the violation occurred; and

(B) the following three (3) years.

(2) An employer contribution rate of two percent (2%) of the employer's taxable wages (as defined in IC 22-4-4-2) for the year in which the violation occurred and the following three (3) years, if:

(A) an employer is already paying the highest employer contribution rate at the time of the violation; or

(B) the increase in the contribution rate described in

subdivision (1) is less than two percent (2%).

(c) This subsection applies to a person who is not an employer (as defined in IC 22-4-7-1 or IC 22-4-7-2). If an administrative law judge determines that a person is subject to a civil penalty under subsection (a), the administrative law judge shall assess a civil penalty of not more than five thousand dollars (\$5,000).

(d) All civil penalties collected under this section shall be deposited in the unemployment insurance benefit fund established by IC 22-4-26-1.

As added by P.L.98-2005, SEC.9.

IC 22-4-11.5-11

Commissioner procedures to identify violators; applicability of federal Department of Labor regulations

Sec. 11. (a) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this chapter.

(b) The interpretation and application of this chapter must meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

As added by P.L.98-2005, SEC.9.